United Nations S/2003/787

Security Council

Distr.: General
31 July 2003

Original: English

Letter dated 31 July 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 25 April 2003 (S/2003/474).

The Counter-Terrorism Committee has received the attached third report from Hungary submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

03-46132 (E) 210803

Annex

Letter dated 14 July 2003 from the Permanent Representative of Hungary to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

On the instruction of my Government, I have the honour to transmit herewith to you the second supplementary report of the Republic of Hungary to the Counter-Terrorism Committee submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

I would like to take this opportunity to reiterate the great appreciation of the Hungarian Government for the close cooperation with CTC and to reaffirm our commitment to provide the Committee with any additional information that the Committee deems necessary or may request.

(*Signed*) László **Molnár**
Ambassador

Enclosure

Second supplementary report to the Counter-Terrorism Committee submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001)

Republic of Hungary*

1.2

Section 8 (2) of Act LXXXIII of 2001 on tightening the regulations on combating terrorism and preventing money-laundering and the implementation of certain restrictions, that took effect on December 19 2001, amended Section 303 (1) b) of Act IV of 1978 on the Penal Code as follows: the Act referred to above stipulates new obligations to make a declaration and — as opposed to the previous general description — provides for more specific elements of offence as to the concealment of the origin or the real nature of an asset (thing), by identifying the authority before which it is concealed as well as the non-fulfilled obligation. Following this, pursuant to international documents and taking into account the recommendations of international organs, the legislator has fully revised the elements of offence for money laundering. Among others, the scope of offences classified as money laundering has been extended to self-performed acts, which would have been previously inconceivable according to the dogmas of the Hungarian penal system, and punishes the use, for economic or financial purposes, of proceeds of criminal conduct (thing) originating from an offence committed by another person even if the user or the person performing financial or banking operations is not aware of the unlawful origin due to negligence.

The new regulation does not identify separately each of the possible unlawful actions aimed to conceal the origin of proceeds of criminal conduct (thing) (e.g. it does not individually refer to the provision of false data in the course of making a declaration), instead, it stipulates in general that any act committed with the intention of economic use for the concealment of the origin of an asset (thing) or any financial or banking operations performed with the above constitutes money laundering.

Every person who is obliged to make a declaration on the real owner — without any conclusive evidence on the intention of committing money-laundering — but failing to make such declaration, or supplying false data is guilty of forgery of private deeds under Section 276 of the Criminal Code; while if there is evidence of the above intention, the person shall have committed the offence of money laundering.

1.3

The consequence under criminal law is that persons specified in the Act on the prevention of money laundering failing to fulfil their reporting obligation — whether intentionally or due to negligence — concerning suspicious transactions or conditions stipulated in the Act are guilty of an offence. The identification and reporting obligations extend to legally operating financial service providers.

Informal money transfer systems are prohibited under Article 3, Paragraph (4) of the Act No. CXII of 1996 on Credit Institutions and Financial Enterprises.

The Criminal Code stipulates the punishment for providing financial services, investment services and insurance activities without a licence (i.e. illegally) in Section 298/D

* The annexes are on file with the Secretariat.

(up to 5 years imprisonment), Section 298/E in Section 298/F, respectively, among economic offences, while the act of organising prohibited games of fortune is punishable under Section 267 of the Criminal Code as an action against public order.

1.4

Act No. LXXXIII of 2001 on combating terrorism Section I, paragraphs (1) and (2) authorizes the Government to impose by way of a decree restrictive measures, including freezing of terrorists' assets. Such restrictive measures should be based on an international obligation. Such obligations may be based not only on restrictive measures adopted by the Security Council in a resolution but also on restrictive measures adopted by the Council of the European Union in a common position within the framework of the Common Foreign and Security Policy, as Hungary fully undertook (as candidate country) the common position concerned.

According to Act No. LXXXIII of 2001 on combating terrorism there is no possibility to freeze terrorist assets if the persons, groups or other organisations do not appear on the above-mentioned UN and EU lists. Such assets may only be frozen according to Act No. IV of 1978 on Criminal Code Article 261, criminalizing terrorist acts. Act No. I of 1973 on Criminal Procedures Articles 101, 106 and especially 107/A provide for the immediate freezing of the assets of the terrorists, therefore an official request based on multilateral or bilateral international mutual legal assistance agreement need to be received.

1.5

The most recent amendment to the Criminal Code taking effect on March 1, 2003 rephrased the elements of offence constituting a terrorist act. The new formulations correspond to both the UN conventions on combating terrorism — e.g. the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on its 52nd session on 15 December 1997 in New York (promulgated by Act XXV of 2002) and the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on its 54th session on 9 December 1999 in New York (promulgated by Act LIX of 2002) — and the framework decision of June 13th 2002 of the Council of the European Union on combating terrorism.

Section 261 (5) of the Criminal Code defines the term of committing a terrorist act in a terrorist group, partially focusing on the preparations thereof. Although the elements of the offence contain a part of the elements enumerated in Section 18 (1) for the definition of the term "preparations", in addition to the preparatory-type conducts (solicit, volunteer or undertake, agree in joint action), they also include the provision or collecting of tangible property for committing a terrorist act as well as the provision of any support whatsoever for the activity of the terrorist group. This criterion implies that the act of the offender is not related directly to the terrorist act committed in a terrorist group, but to the very operation of such a group. This latter act may only be committed by a person outside the group and presumes that the terrorist group already exists. The newly formulated elements of offence already render the collecting of tangible property punishable, since the UN Convention referred to above also renders the same punishable. The collection of property does not necessarily mean that the offender will provide them for committing a terrorist act, therefore, it is conceivable that they will not be actually used — only intended to be used — for such an offence. The definition of the terrorist group in the Act corresponds to that provided for in Article 2 of the framework decision. The new text of Section 261 of the Criminal Code is attached to the report as Annex I.

1.6

New legislation is at an advanced stage of preparation.

Here is a short summary about the possible elements of the new legislation:

On the basis of international obligations of the Republic of Hungary arising particularly from decisions of the UN Security Council and from its adherence to the Common Positions and Regulations of the European Union the new legislation will introduce general prohibition of conducting contract (expect the contracts of minor importance aimed at satisfying everyday needs) against persons, groups, and other organisations, who are designated in particular by the following UN SC Resolutions 1267 (1999), 1333 (2000), 1373 (2001),1390 (2002) and also subsequent EU Council Common Positions 2001/931/CFSP, 2002/976/CFSP, 2002/402/CFSP, 2002/340/CFSP, 2003/140/CFSP. However it is worth mentioning that the related UN SC Resolutions will be implemented by the acquis communautaire at the time of the accession to the European Union (expected date 1 May 2004) since the Council Regulation 2580/2001 and 881/2002 will be directly applicable by the Hungarian authorities and financial institutions. Consequently those Articles of the new legislation related to the implementation of EU Regulations will be abrogated. Persons or entities who are performing restrictive measures shall be obliged to report to the Hungarian National Police Headquarters. In line with EU Council Resolution no. 2580/2001 the competent authority (Ministry of Finance) may grant specific authorisation to make payment in respect with special circumstances, for instance human needs, payment of taxes. The breach of restrictive measures is considered as a crime according to the Hungarian Criminal Code, Article 261/A.

1.7

According to the terminology of the Criminal Code "recruitment" means that the offender requests another person to perform an act, which is not punishable by law. This definition is used e.g. for trafficking with human beings. At the same time "recruitment" to participate in a terrorist group qualifies as an act violating Section 261 (5) of the Criminal Code — as described in 1.5 above — as soliciting to commit a terrorist act, and is punishable accordingly.

1.8

It is not envisaged to introduce amendments to the current legislation on international mutual assistance in criminal matters, which would modify terms of cooperation with Member States of the United Nations.

1.9

Act CXXVI. of 2000 provided for the establishment of the Coordination Centre to Combat Organized Crime. The Centre is designed to be a single unified system for the collecting, processing, storing and providing of data concerning the 32 criminal offences regulated by the Act (i.e. trafficking in human beings, terrorist acts, participation in a criminal organization, corruption etc).

The Centre itself is part of the overall system established to fight terrorism and operates as a dedicated unit of the Ministry of Interior as shown in the organigram attached to the first supplementary report. The Centre coordinates and supports the work of different law enforcement organizations investigating and fighting organized crime. The management of data includes information on persons, criminal groups and their connections, criminal activity, the methods and means of perpetrating the crime.

1.10

The latest version of the responses of the Republic of Hungary to the questionnaire of the Financial Action Task Force (FATF) is attached as Annex II.

In order to reflect Hungarian efforts to implement best international practices the text in English of Act XV. of 2003 on preventing money laundering is also attached as Annex III.

The Transposition Table on the status of implementation of EC Directive 91/308, as amended by Directive 2001/97/EC as well as a background material on recent developments in the Hungarian anti-money laundering (AML) regime are also attached as Annex IV and Annex V.